

Revised Outline of Proposed Terms for Settlement and Refinancing

~~STRICTLY CONFIDENTIAL PRIVILEGED~~
~~FOR SETTLEMENT PURPOSES ONLY~~
~~CONFIDENTIAL SETTLEMENT COMMUNICATION~~

August 8, 2011

The terms contained herein are contingent

upon the negotiation and execution by all parties

of a 1. Refinancing. Refinancing debt to be issued by an independent public corporation (see item 2 below). The principal terms of the financing are as follows:

comprehensive
Settlement
Agreement

(a) aggregate principal amount: ~~\$2,215,000,000~~ ^{\$2,305,859,000}

(b) proceeds to be applied as follows:

☐ ~~\$220,000,000~~ ^{\$230,586,000} (approx.) to debt service reserve fund

☐ ~~\$25,000,000~~ ^{\$25,273,000} to pay costs of issuance (estimated)

☐ ~~\$1,970,000,000~~ ^{\$2,050,000,000} to redeem all outstanding sewer warrants based upon negotiated concessions

(c) 1.25x debt service coverage

(d) 40-year final maturity

(e) primary security and source of payment: priority pledge of net sewer revenues

(f) additional security: moral obligation covenant by the State of Alabama to seek legislative appropriations to replenish draws on the debt service reserve fund

(g) operating expenses and capital outlays to be covered by system cash flow

2. Creation of independent public corporation for ownership, management and financing the sewer system. The County will seek, and the Governor will support, legislation in a special session to authorize creation of a new form of governmental utility service corporation (GUSC) to serve as the issuer of the refinancing debt and the owner/operator of the sewer system. Significant features of the GUSC legislation will include:

(a) 5-7 member board of directors. All directors to possess appropriate professional credentials as specified in enabling legislation. Directors to be appointed by County and Governor. County to appoint all directors after refinancing bonds are paid or are refinanced without credit support from the State of Alabama.

(b) legislative provisions for establishing sewer rates

- (c) authorization to file Chapter 9, but only with consent of the Governor *at a mutually agreeable time* WDC 8-11-11
- (d) County, with cooperation of the Receiver and the Trustee, to convey sewer system to the GUSC ~~as soon as practicable~~ after adoption of GUSC enabling legislation. Such transfer will be structured to be rescinded, at the County's option, if the refinancing debt is not issued.
- (e) County and/or GUSC, with cooperation of the Receiver, to implement an interim sewer rate increase prior to issuance of the refinancing debt and consistent with the terms of the settlement so long as parties are pursuing refinancing in good faith
- (f) County may retain independent consultants to review Receiver's rate reasonableness, cost of service, engineering and operating cost studies. Receiver to cooperate with such consultants without threat of future business limitations and to pay the cost thereof from sewer revenues.

3. ~~Low income assistance fund. A fund in the amount of \$20,000,000 will be created to assist qualifying sewer users. The County will contribute \$1,000,000 to the fund immediately prior to any rate increase adopted by the County or GUSC, with cooperation of the Receiver, prior to the issuance of the refinancing debt. Creditors to contribute \$19,000,000 to the fund upon issuance of the refinancing debt. The county and/or warrent holders will fund a million dollars a year for a minimum of 20 years to establish~~ WDC 8-11-11
4. ~~Definitive Settlement Agreement. The County, the Receiver, the State of Alabama and representatives of the creditors will enter into a definitive Settlement Agreement by August 22, 2011, setting forth, in more detail, the terms contained in this Outline. The Settlement Agreement will also specify the conditions to the sale and issuance of the refinancing debt by no later than June 30, 2012, unless extended by the parties. If the conditions to the issuance of the refinancing debt are not satisfied or waived, the rights and positions of all parties will be fully preserved and no party shall use the fact of another party's entry into the settlement agreement in any subsequent or continued litigation. Conditions to issuance of the refinancing debt shall include, without limitation:-~~ and support a low income assistance program.

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- (a) adoption of legislation regarding
- ☐ GUSC authorization
 - ☐ State moral obligation pledge
 - ☐ mandatory sewer hookups for new developments within specified distance of existing sewer lines, subject to environmental limitations
 - ☐ Solution to the General Fund deficiency
 - ☐ conditional local revenue source for reimbursement of State appropriations, if any

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- (b) Except as provided in 5 below, all litigation relating to the sewer system to be stayed pending issuance of the refinancing debt, at which time all such litigation shall be settled or dismissed
 - (c) settlement of County's lawsuit against JPMorgan, and dismissal of counterclaims
 - (d) negotiation of Closing Agreement with the IRS covering existing sewer warrants and proposed refinancing bonds, on terms satisfactory to the County and other parties to the Settlement Agreement
 - (e) judicial confirmation of the financing structure and proposed sewer rate model
 - (f) the Receiver's financing and operating models, including projections of capital expenditures and operating costs (upon which the County has relied in projecting future sewer rates and in making this proposal) shall be verified by the independent consultant(s) retained by the County under 2(f) above and confirmed as providing a reasonable basis for projecting the performance of the sewer system
 - (g) the weighted average interest cost of the refinancing bonds shall not exceed ~~6.36%~~ 6.15%
 - (h) delivery of County's audited financial statements through fiscal year 2010 by October 31, 2011 and its fiscal year 2011 audited financial statements by January 31, 2012
 - (i) consent of the New York Department of Insurance (or other necessary regulatory authorities) to concessions provided by the monoline insurers
 - (j) all remaining interest rate swaps to be terminated with no liability to the County
 - (k) all outstanding overhead charges of the County for services to the Environmental Services Department to be paid within 30 days of execution of the Settlement Agreement
 - (l) Settlement Agreement to terminate if the County makes a Chapter 9 filing prior to issuance of the refinancing bonds

5. **Role of the Receiver.** The Receiver will continue to administer and control the sewer system from the date of the Settlement Agreement to the date of issuance of the refinancing bonds (the "Refinancing Period") but will not pursue further attempts to increase sewer rates (except as provided herein), to recover the \$75 million paid to the County by JP Morgan or to attach any further assets of the County during the Refinancing Period. Upon issuance of the refinancing bonds, the Bank of New York litigation against the County will be dismissed, and the appointment of the Receiver will terminate. John Young will provide transitional assistance to the GUSC after the date of issuance of the refinancing bonds, if requested by the GUSC. The cost of such assistance

will be satisfactory to the GUSC and will be an operating expense of the system, payable from sewer revenues.

6. **General Obligation Warrants.** ~~JP Morgan, or any other satisfactory financial institution, will provide a letter of credit, standby purchase agreement or other credit enhancement or liquidity support, at a reasonable charge, to allow the County's Series 2001-B General Obligation Warrants to be remarketed at market interest rates.~~

7. **Expiration.** This proposal and the offer contained herein expire at 9:00 a.m., Central Daylight Time, on August 12, 2011, unless accepted in writing by all necessary parties and delivered to the County Commission before such time.

Series 2001-B General Obligation Warrants (GO Warrants).

JP Morgan will (a) waive approximately \$9 million in claims arising from termination of a pari passu swap and accrued and unpaid default interest on such GO Warrants and (b) reinstate the original amortization schedule applicable to the GO Warrants

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